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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/998,661	12/03/2001	Todd Charles McNeel	0914-1412-DV2	7552

6449 7590 11/06/2003

ROTHWELL, FIGG, ERNST & MANBECK, P.C.
1425 K STREET, N.W.
SUITE 800
WASHINGTON, DC 20005

EXAMINER

MADSEN, ROBERT A

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 11/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/998,661

Applicant(s)

MCNEEL ET AL.

Examiner

Robert Madsen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other: ____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wisdom et al. (US 4122198) in view of Hilton et al. (US 4052838) and Khalsa (US 5298274) and MacKendrick (US 3520248)

3. Regarding claim 1, Wisdom et al. teach a method of forming tortilla chips in a manner which facilitates subsequent packaging in a stacked arrangement wherein chips are cut from a sheet of masa, the chips are preformed in molds with a consistent orientation, and are removed from the mold while substantially maintaining the mold shape but are silent in teaching a particular shape and that the chips are held in the molds *during* frying or baking, wherein the base edges and apex corners of successive tortilla chips are in alternating orientation in the mold (Column 1, lines 11-49, Column 2, lines 13-62).

4. With respect to using a mold during frying, Hilton et al. teach stackable, uniformly shaped corn-based dough products are conventionally fried in molds to provide the uniformity (Column 1, lines 10-51). Therefore it would have been obvious to modify Wisdom such that frying was completed in the mold since Hilton et al. teach frying in a mold will provide a uniform stackable fried chip. One

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would have been substituting one known molding / frying step for another for the same purpose.

5. With respect to the triangular shape Khalsa , who also teaches fried tortilla chips, is relied on as evidence of the conventionality of cutting triangular tortilla chips such that the base edges and apex corners of successive tortilla chips are in alternating orientation. (Abstract, Column 5, lines 32-47, and Figure 2).

Therefore, it would have been obvious to modify Wisdom et al. and include a triangular shaped chip since one would have been substituting on tortilla chip form for another for the same purpose.

6. With respect to the particular arrangement of chips in the mold, MacKendrick teach uniformly shaped fried chip products formed using molds that match the particular dough cutting pattern (Figure 3, Column 3, lines 1-35, Column 6, line 14 to Column 7 , line 30). Therefore, it would have been obvious to further modify Wisdom et al. such that the mold section would align the cut pieces such that the base edges and apex corners of successive tortilla chips are in alternating orientation since (1) this was a known configuration for cutting triangular chips and (2) MacKendrick teaches the molds are aligned with the cutting pattern.

7. Regarding claim 2, Wisdom et al. is silent in teaching a triangular-shaped canister. However, Hilton et al. who teach uniformly shaped stackable chips teach placing circular chips in cylindrical canisters having circular diameters (Column 7, lines 30-53, items 31 of Figure 1). Therefore, it would have been obvious to select a triangular shaped canister for a triangular shaped chip since

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Hilton et al. teach the diameter of the canister matches the diameter of the chip for uniformly shaped stacked chips.

8. Regarding claim 3, Wisdom et al. teach forming a sheet of dough, toasting the sheet, which would result in a desired surface moisture content, proofing the sheet for equilibration, and imparting a desired texture by passing the sheet through a shaping roller (Abstract, Column 2, lines 40-62, Column 3, lines 23-40).

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mattson (US 3930049) teaches triangular tortilla chips. Szwerc teaches saddle shaped triangular chips. Bornhorst et al. (US 5529799) and Adreski et al. (6004612) teach triangular chips cut with bases and apexes in alternating orientation. Campell et al. (US 3905285) and Baird (US 3911805) teach conventional uniform chip frying methods.

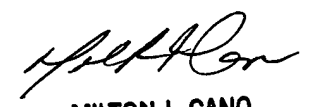
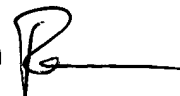
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 7:00AM-3:30PM M-F.

11. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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12. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0061.

Robert Madsen
Examiner
Art Unit 1761



MILTON I. CANO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700